

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO

BRYAN BYERS, individually, and on behalf of
all others similarly situated,

Plaintiff,

v.

THE ANDREWS GROUP LLC, an Ohio
company, and PLUM TREE REALTY LLC, an
Ohio company,

Defendants.

NO.

CLASS ACTION COMPLAINT

JURY DEMAND

Plaintiff Bryan Byers (“Plaintiff Byers” or “Byers”) brings this Class Action Complaint and Demand for Jury Trial against Defendant The Andrews Group LLC (“Defendant Andrews Group”) and Defendant Plum Tree Realty LLC doing business as Plum Tree (“Defendant Plum Tree”) to stop the Defendants from violating the Telephone Consumer Protection Act by sending telemarketing text messages to cellular telephone numbers *without consent*. Plaintiff also seeks injunctive and monetary relief for all persons injured by Defendants’ conduct. Plaintiff Byers, for this Complaint, alleges as follows upon personal knowledge as to himself and his own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by his attorneys.

PARTIES

1. Plaintiff Bryan Byers is a resident of Columbus, Ohio.

2. Defendant Andrews Group is an Ohio registered company headquartered in Columbus, Ohio. Defendant Andrews Group conducts business throughout this District, Ohio, and the U.S.

1 9. When Congress enacted the TCPA in 1991, it found that telemarketers called more
2 than 18 million Americans every day. 105 Stat. 2394 at § 2(3).

3 10. By 2003, due to more powerful autodialing technology, telemarketers were calling
4 104 million Americans every day. In re Rules and Regulations Implementing the TCPA of 1991,
5 18 FCC Rcd. 14014, ¶¶ 2, 8 (2003).

6 11. The problems Congress identified when it enacted the TCPA have only grown
7 exponentially in recent years.

8 12. Industry data shows that the number of robocalls made each month increased from
9 831 million in September 2015 to 4.7 billion in December 2018—a 466% increase in three years.

10 13. According to online robocall tracking service “YouMail,” 4 billion robocalls were
11 placed in September 2021 alone, at a rate of 131.1 million calls per day. www.robocallindex.com
12 (last visited on October 14, 2021).

13 14. The FCC also has received an increasing number of complaints about unwanted
14 calls, with 150,000 complaints in 2016, 185,000 complaints in 2017, and 232,000 complaints in
15 2018. FCC, Consumer Complaint Data Center, www.fcc.gov/consumer-help-center-data.

16 15. “Robocalls and telemarketing calls are currently the number one source of
17 consumer complaints at the FCC.” Tom Wheeler, *Cutting off Robocalls* (July 22, 2016), statement
18 of FCC chairman.¹

19 16. “The FTC receives more complains about unwanted calls than all other complaints
20 combined.” Staff of the Federal Trade Commission’s Bureau of Consumer Protection, *In re Rules*
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26

27 ¹ <https://www.fcc.gov/news-events/blog/2016/07/22/cutting-robocalls>

1 *and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Notice of
2 Proposed Rulemaking, CG Docket No. 02-278, at 2 (2016).²

3 17. In recent years a troubling trend has surfaced in the real estate industry where real
4 estate agents are cold calling consumers soliciting their services without their consent, including
5 calls that are being placed to consumers that registered their phone numbers on the DNC.

6 18. This trend has resulted in consumers being bombarded by unsolicited real estate
7 solicitation calls without their consent and in violation of the TCPA.

9 COMMON ALLEGATIONS

10 19. Defendant Andrews Group is a real estate company that assists consumers in selling
11 their properties.³

12 20. Defendant Andrews Group works in collaboration with Defendant Plum Tree and
13 uses their logo throughout their website and other material:



19 21. Defendant Andrews Group sells service packages in the range of \$299 to \$599 to
20 consumers to assist them with selling their properties. Defendant places outbound telemarketing
21 calls and text messages to solicit consumers to buy these packages.

22

23

24

25 ² [https://www.ftc.gov/system/files/documents/advocacy_documents/comment-staff-ftc-bureau-](https://www.ftc.gov/system/files/documents/advocacy_documents/comment-staff-ftc-bureau-consumer-protection-federal-communications-commission-rules-regulations/160616robocallscomment.pdf)
26 [consumer-protection-federal-communications-commission-rules-](https://www.ftc.gov/system/files/documents/advocacy_documents/comment-staff-ftc-bureau-consumer-protection-federal-communications-commission-rules-regulations/160616robocallscomment.pdf)
27 [regulations/160616robocallscomment.pdf](https://www.ftc.gov/system/files/documents/advocacy_documents/comment-staff-ftc-bureau-consumer-protection-federal-communications-commission-rules-regulations/160616robocallscomment.pdf)

28 ³ <https://theandrewsgroupllc.com/>

⁴ *Id.*

22. Defendant Plum Tree trains its agents like Andrews Group to use telemarketing tools and technology to place cold calls, including automated text messages, to increase their outreach. Defendant Plum Tree shares a lot of material which shows how they train and promote cold calling, including use of text messaging services, among its real estate agents, for instance:



⁵ <https://www.facebook.com/page/147175095418718/search/?q=cold%20call>



Plum Tree Realty Careers

May 14 · ⚙️



Are you worried about property owners asking you where you got their phone number when you are cold calling? Don't worry. This video will help you with that.

[#RickyCarruth](#) [#RealEstateTraining](#) [#ColdCalling](#)



YOUTUBE.COM

Real Estate Cold Calling | "How did you get my number?"

REAL ESTATE COLD CALLING | "HOW DID YOU GET MY NUMBE...



6



Plum Tree Realty Careers

April 26 · ⚙️



Are you implementing texting in your follow up strategy?



YOUTUBE.COM

TEXTING IN REAL ESTATE?? Best Practices + Tips

TEXT MARKETING! Are you implementing texting in your follow u...



7

⁶ <https://www.facebook.com/PlumTreeCareers/>

⁷ *Id.*



Plum Tree Realty Careers

April 2 · ⚙️



Cold calling doesn't have to be daunting!



YOUTUBE.COM

How to GET OVER THE FEAR of Cold Calling

HOW TO GET OVER THE FEAR OF COLD CALLINGI have made o...

8



Plum Tree Realty Careers

February 24 · ⚙️



Learn Ricky Carruth's techniques to master sales cold calling and circle prospecting!



YOUTUBE.COM

Cold Calling Real Estate Prospects LIVE

COLD CALLING REAL ESTATE PROSPECTS LIVECold calling real ...

9

⁸ <https://www.facebook.com/PlumTreeCareers/>

⁹ *Id.*

1 23. In placing unsolicited text messages to consumers, Defendants send, or cause to be
2 sent, multiple text messages to phone numbers that are registered on the DNC, such as Plaintiff's
3 number.

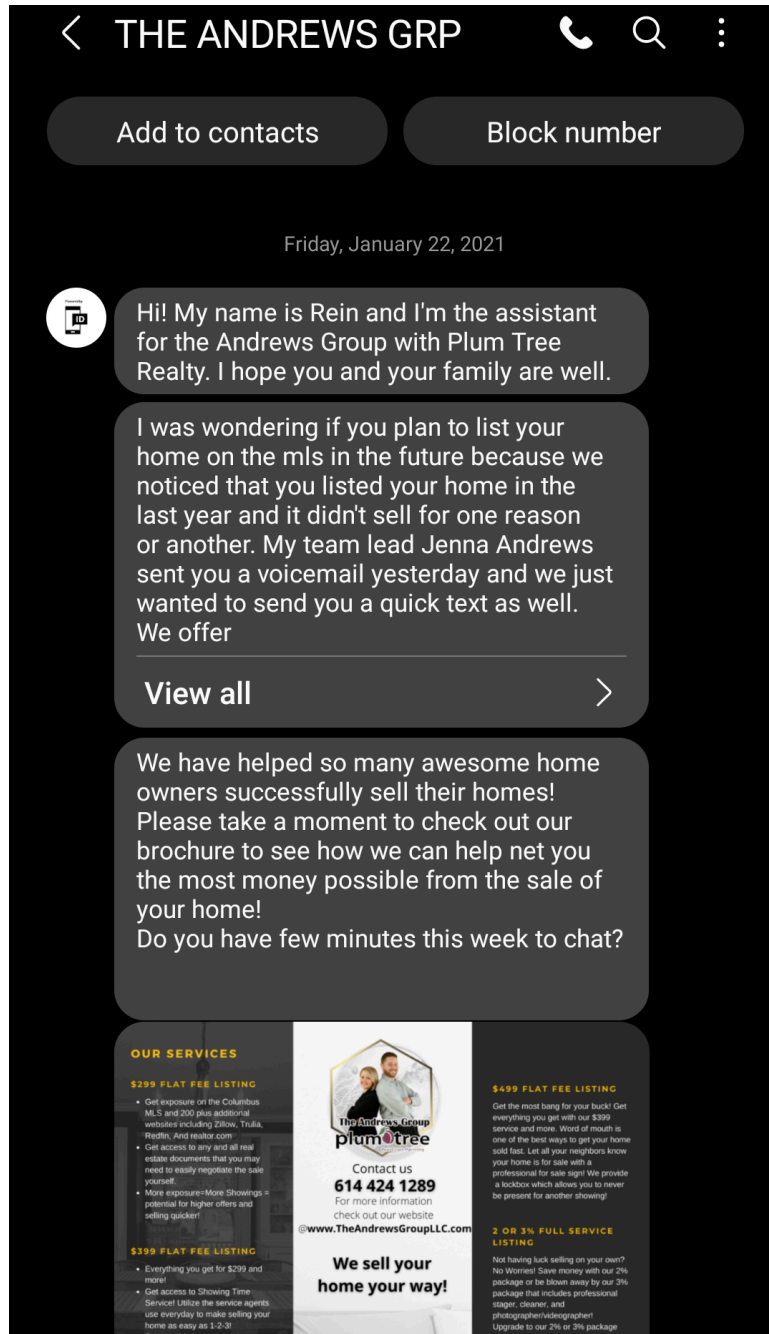
4 24. In response to these text messages, Plaintiff Byers files this lawsuit seeking
5 injunctive relief requiring the Defendants to cease from violating the Telephone Consumer
6 Protection Act, as well as an award of statutory damages to the members of the Class and costs.
7

8 **PLAINTIFF BYERS'S ALLEGATIONS**

9 25. Plaintiff Byers registered his cell phone number on the DNC on February 5, 2008,
10 for the express purpose that he would not receive unsolicited calls or text messages.

11 26. Plaintiff Byers's phone number is not associated with a business and is used for
12 personal use only.

13 27. On January 22, 2021, around 9:45 AM, Plaintiff received a series of four unsolicited
14 text messages from phone number 614-368-7500 to his cell phone, containing a hyperlink to
15 Defendant Andrew Group's website and an image of their brochure:
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28. The unsolicited text message received by the Plaintiff contained the following image of Defendant Andrew Group's marketing brochure carrying details of their subscription plans, their contact info, a link to their website www.TheAndrewsGroupLLC.com, and Defendant Plum Tree's logo:


OUR SERVICES

\$299 FLAT FEE LISTING

- Get exposure on the Columbus MLS and 200 plus additional websites including Zillow, Trulia, Redfin, And realtor.com
- Get access to any and all real estate documents that you may need to easily negotiate the sale yourself.
- More exposure=More Showings = potential for higher offers and selling quicker!

\$399 FLAT FEE LISTING

- Everything you get for \$299 and more!
- Get access to Showing Time Service! Utilize the service agents use everyday to make selling your home as easy as 1-2-3!
- Comparable homes sent to your inbox so you can easily determine fair market value for your home!



The Andrews Group
plumtree
Real Estate Marketing

Contact us
614 424 1289
For more information
check out our website
[@www.TheAndrewsGroupLLC.com](http://www.TheAndrewsGroupLLC.com)

**We sell your
home your way!**

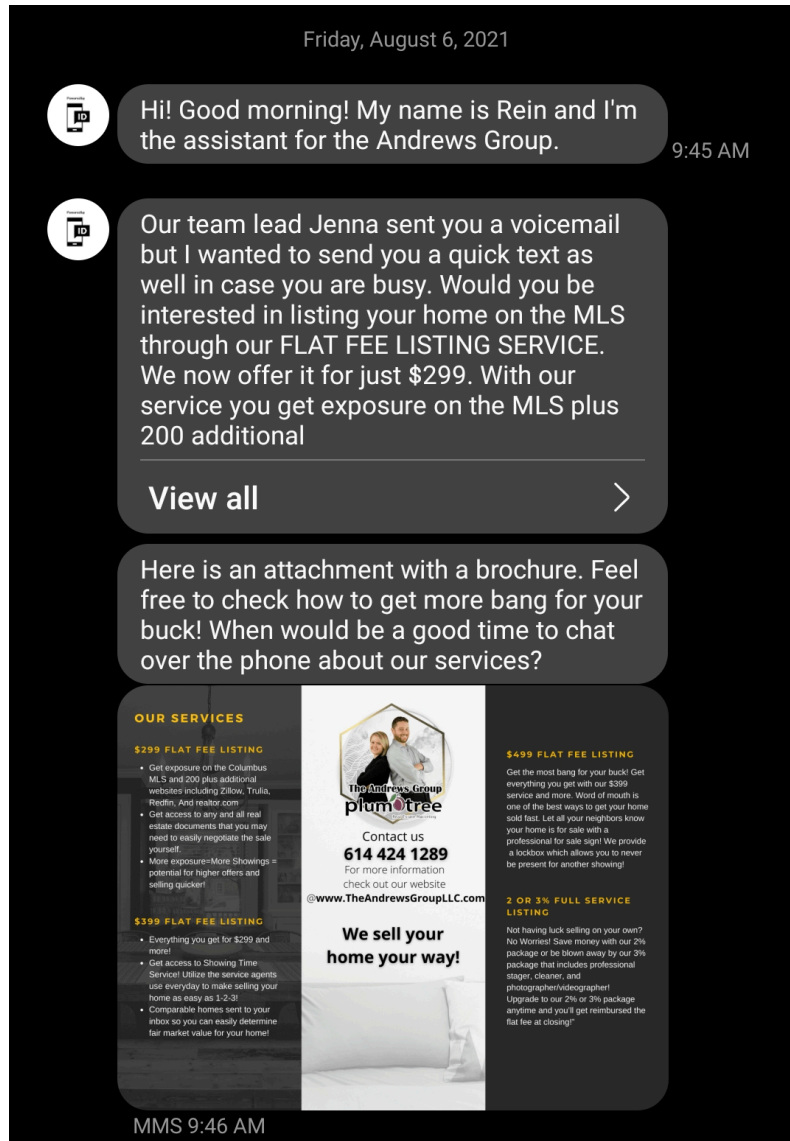
\$499 FLAT FEE LISTING

Get the most bang for your buck! Get everything you get with our \$399 service and more. Word of mouth is one of the best ways to get your home sold fast. Let all your neighbors know your home is for sale with a professional for sale sign! We provide a lockbox which allows you to never be present for another showing!

2 OR 3% FULL SERVICE LISTING

Not having luck selling on your own? No Worries! Save money with our 2% package or be blown away by our 3% package that includes professional stager, cleaner, and photographer/videographer! Upgrade to our 2% or 3% package anytime and you'll get reimbursed the flat fee at closing!"

29. On August 6, 2021, at 9:45 AM, Plaintiff again received a similar set of four unsolicited text messages as before, from the Defendants using the same phone number, 614-368-7500, soliciting Defendants' real estate service packages to the Plaintiff:



30. Plaintiff Byers did not have a prior business relationship with the Defendants and never provided his phone number or his consent to receive any solicitation from or on behalf of the Defendants.

31. The unauthorized solicitation telephone text messages that Plaintiff received from Defendants, as alleged herein, have harmed Plaintiff Byers in the form of annoyance, nuisance, and invasion of privacy, and disturbed the use and enjoyment of his phone, in addition to the wear

1 and tear on the phone's hardware (including the phone's battery) and the consumption of memory
2 on the phone.

3 32. Seeking redress for these injuries, Plaintiff Byers, on behalf of himself and a Class
4 of similarly situated individuals, bring suit under the Telephone Consumer Protection Act, 47
5 U.S.C. § 227, *et seq.*, which prohibits unsolicited telemarketing text messages to telephone
6 numbers that are registered on the DNC.

7 CLASS ALLEGATIONS

8
9 33. Plaintiff Byers brings this action pursuant to Federal Rules of Civil Procedure
10 23(b)(2) and 23(b)(3) and seek certification of the following Class:

11 **Do Not Call Registry Class:** All persons in the United States who from four years prior
12 to the filing of this action through trial (1) Defendants (or an agent acting on behalf of the
13 Defendants) texted more than one time, (2) within any 12-month period, (3) where the
14 person's residential telephone number had been listed on the National Do Not Call Registry
15 for at least thirty days, (4) for substantially the same reason Defendant texted Plaintiff, and
16 (5) for whom Defendant claims it obtained the person's number in substantially the same
17 manner it obtained Plaintiff's number.

18 34. The following individuals are excluded from the Class: (1) any Judge or Magistrate
19 presiding over this action and members of their families; (2) Defendants, their subsidiaries,
20 parents, successors, predecessors, and any entity in which either Defendants or its parents have a
21 controlling interest and their current or former employees, officers and directors; (3) Plaintiff's
22 attorneys; (4) persons who properly execute and file a timely request for exclusion from the Class;
23 (5) the legal representatives, successors or assigns of any such excluded persons; and (6) persons
24 whose claims against Defendants have been fully and finally adjudicated and/or released. Plaintiff
25 Becker anticipates the need to amend the Class definitions following appropriate discovery.

26 35. **Numerosity:** On information and belief, there are hundreds, if not thousands of
27 members of the Class such that joinder of all members is impracticable.

1 36. **Commonality and Predominance:** There are many questions of law and fact
2 common to the claims of the Plaintiff and the Class, and those questions predominate over any
3 questions that may affect individual members of the Class. Common questions for the Class
4 include, but are not necessarily limited to the following:

- 5 (a) whether Defendants systematically sent, or caused to be sent, multiple text
6 messages to Plaintiff and other consumers whose telephone numbers were
7 registered with the DNC without first obtaining consent to send the texts;
8 (b) whether Defendants' text messages to Plaintiff and other consumers were sent for
9 telemarketing purposes;
10 (c) whether Defendants' conduct constitutes a violation of the TCPA; and
11 (d) whether members of the Class are entitled to treble damages based on the
12 willfulness of Defendants' conduct.
13

14 37. **Adequate Representation:** Plaintiff Byers will fairly and adequately represent and
15 protect the interests of the Class, and has retained counsel competent and experienced in class
16 actions. Plaintiff Byers has no interests antagonistic to those of the Class, and Defendants have no
17 defenses unique to Plaintiff. Plaintiff Byers and his counsel are committed to vigorously
18 prosecuting this action on behalf of the members of the Class, and have the financial resources to
19 do so. Neither Plaintiff Byers nor his counsel have any interest adverse to the Class.
20

21 38. **Appropriateness:** This class action is also appropriate for certification because
22 Defendants have acted or refused to act on grounds generally applicable to the Class and as a
23 whole, thereby requiring the Court's imposition of uniform relief to ensure compatible standards
24 of conduct toward the members of the Class and making final class-wide injunctive relief
25 appropriate. Defendants' business practices apply to and affect the members of the Class
26

1 uniformly, and Plaintiff's challenge of those practices hinges on Defendants' conduct with respect
2 to the Class as wholes, not on facts or law applicable only to Plaintiff Byers. Additionally, the
3 damages suffered by individual members of the Class will likely be small relative to the burden
4 and expense of individual prosecution of the complex litigation necessitated by Defendants'
5 actions. Thus, it would be virtually impossible for the members of the Class to obtain effective
6 relief from Defendants' misconduct on an individual basis. A class action provides the benefits of
7 single adjudication, economies of scale, and comprehensive supervision by a single court.
8

9
10 **FIRST CLAIM FOR RELIEF**
11 **Telephone Consumer Protection Act**
12 **(Violation of 47 U.S.C. § 227)**
13 **(On Behalf of Plaintiff and the Do Not Call Registry Class)**

14 39. Plaintiff Byers repeats and realleges paragraphs 1 through 38 of this Complaint and
15 incorporates them by reference.

16 40. The TCPA's implementing regulation, 47 C.F.R. § 64.1200(c), provides that "[n]o
17 person or entity shall initiate any telephone solicitation" to "[a] residential telephone subscriber
18 who has registered her or her telephone number on the national do-not-call registry of persons who
19 do not wish to receive telephone solicitations that is maintained by the federal government."

20 41. Any "person who has received more than one telephone call within any 12-month
21 period by or on behalf of the same entity in violation of the regulations prescribed under this
22 subsection may" may bring a private action based on a violation of said regulations, which were
23 promulgated to protect telephone subscribers' privacy rights to avoid receiving telephone
24 solicitations to which they object. 47 U.S.C. § 227(c).

25 42. Defendants violated 47 C.F.R. § 64.1200(c) by initiating, or causing to be initiated,
26 telephone solicitations to telephone subscribers such as Plaintiff and the Do Not Call Registry
27 Class members who registered their respective telephone numbers on the National Do Not Call

1 Registry, a listing of persons who do not wish to receive telephone solicitations that is maintained
2 by the federal government.

3 43. Defendants violated 47 U.S.C. § 227(c)(5) because Plaintiff and the Do Not Call
4 Registry Class received more than one telephone text message in a 12-month period made by or
5 on behalf of the Defendant in violation of 47 C.F.R. § 64.1200, as described above.

6 44. As a result of Defendants' conduct as alleged herein, Plaintiff and the Do Not Call
7 Registry Class suffered actual damages and, under section 47 U.S.C. § 227(c), are entitled, inter
8 alia, to receive up to \$500 in damages for such violations of 47 C.F.R. § 64.1200.

9 45. To the extent Defendants' misconduct is determined to be willful and knowing, the
10 Court should, pursuant to 47 U.S.C. § 227(c)(5), treble the amount of statutory damages
11 recoverable by the members of the Do Not Call Registry Class.

12 **PRAYER FOR RELIEF**

13 **WHEREFORE**, Plaintiff Byers, individually and on behalf of the Class, prays for the
14 following relief:

- 15 a) An order certifying this case as a class action on behalf of the Class as defined above;
16 appointing Plaintiff Byers as the representative of the Class; and appointing his
17 attorneys as Class Counsel;
- 18 b) An award of actual and/or statutory damages and costs;
- 19 c) An order declaring that Defendants' actions, as set out above, violate the TCPA;
- 20 d) An injunction requiring Defendants to cease all unsolicited calling activity, and to
21 otherwise protect the interests of the Class; and
- 22 e) Such further and other relief as the Court deems just and proper.
- 23

24 **JURY DEMAND**

25 Plaintiff Byers requests a jury trial.

26

1 DATED this 14th day of November, 2021.

2 **BRYAN BYERS**, individually and on behalf of all
3 others similarly situated,

4 By: /s/ Brian Giles

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17 *Attorneys for Plaintiff and the putative Class*

18 **Pro Hac Vice motion forthcoming*